

BEST AVAILABLE COPY**REMARKS**

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According to the Office Action mailed June 19, 2006, Claims 1-52 are pending in the current application. By this response, Applicants have amended canceled claims 6, 7 and 47-52, and have amended claims 2, 4, 9, 11-13, 15-17, 19-22, 24, 26-28, 30, 31, 33, 36, 38-41, and 43-46. Applicants have amended the claims to correct obvious typographical errors (2, 4, 9, 16, and 44) and dependency (11-13, 15, 17, 19-22, 24, 26-28, 30, 31, 33, 36, 38-41, 43, 45, and 46). No new matter has been added.

The Examiner has indicated that the application contains inventions that do not share a single general inventive concept under PCT Rule 13.1. In particular, the Examiner claims that the claims lack the corresponding special technical features, in accordance with PCT Rule 13.2, because Claim 1 is anticipated by US Pre Grant Publication No. 2003/0118547 to Vandenberg ("Vandenberg"). The Examiner has required a restriction of the claims to the following inventions:

Group I, Claims 1-5, drawn to a pharmaceutical composition;

Group II, Claims 6-46, drawn to a method for treating inflammation in a mammal;

or

Group III, Claims 47-52, drawn to the use of a tissue protective cytokine.

Applicants respectfully disagree with the Examiner's determination, and hereby traverse the restriction requirement. In particular, Applicants maintain that Claim 1 is not anticipated by Vandenberg.

The above-noted application discloses a pharmaceutical composition comprised of a tissue protective cytokine and an anti-inflammatory and/or an immunomodulatory agent and a pharmaceutically acceptable carrier. The application also discloses the method of treating inflammation in mammals using this composition. See [00143] to [00154].

The Examiner appears to have identified the composition, use of erythropoietin and an anti-inflammatory agent with a pharmaceutically acceptable carrier, as the special technical feature of the claims. Further, the Examiner claims that claim 1 of the current application, which claims the composition, is anticipated by Vandenberg and therefore the claims as a whole do not share a special technical feature and fail to meet the requirements of PCT Rule 13.2.

Vandenburg discloses a composition of a physiological active agent comprising neutralizing agents, inhibitors of digestive enzymes and/or uptake increasing agents. The compositions are taught to be of use in the oral administration of a physiological active agent in that they prevent the denaturation of the active agent, inhibit digestive enzymes (to substantially prevent enzymatic digestion of the agent), and increases intestinal absorption of the agent (see Vandenburg, abstract). In particular, Vandenburg indicates that the composition may comprise a physiological active agent from the group listed at paragraph [0033], which includes anti-inflammatory agents, or may comprise an agent selected from the list at paragraph [0076], which includes erythropoietin. However, Vandenburg does not disclose a composition comprising an anti-inflammatory agent and erythropoietin as recited in claim 1 of the instant application. Moreover, Vandenberg indicates that for each of the other agents (neutralizing agents, inhibitors, and uptake increasing agents) that at least one is present or that the composition may include combinations thereof, *see* paragraphs [0035] to [0041], but similar language suggesting a combination is not used with regard to the physiologically active agent. *See* [0033].

Accordingly, Vandenburg does not recite each and every element of the present invention as recited in claim 1 and, thus, does not anticipate claim 1, which claims a pharmaceutical composition of a tissue protective cytokine, an anti-inflammatory agent, and a pharmaceutically acceptable carrier. Thus, Group I and Group II still share this corresponding special technical feature in accordance with PCT Rule 13.2.

In order to be fully responsive, however, Applicants hereby provisionally elect, with traverse, to prosecute the invention of Group II, Claims 6-46, drawn to a method for treating inflammation in a mammal.

Applicants respectfully request that the foregoing remarks made herein be entered into the record of the instant application.

Respectfully submitted,

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By: Frederick J. Hamble 42,623
Frederick J. Hamble (Reg. No.)

712 Kitchawan Road
Ossining, NY 10562
(914) 762-7586